



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: )  
GABRIEL V. LECHUGA )  
SERIAL NO.: 09/735,342 )  
FILED: DECEMBER 12, 2000 ) GROUP ART UNIT NO. 3752  
TITLE: HEAT PROTECTIVE COVER )  
SYSTEM FOR HOT WATER )  
PIPES )  
EXAMINER: JAMES F. HOOK )

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TECHNOLOGY CENTER R3700

PETITION TO HONORABLE COMMISSIONER FOR PATENTS

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

The applicant in the above-identified U.S. patent application hereby petitions the Honorable Commissioner for Patents and Trademarks to overrule the decision of the Examiner with respect to a restriction requirement in the above-identified patent application. In an Office Action dated April 9, 2002, the Examiner restricted the application between Claims 1-35, drawn to a jacket, and Claims 36-38 drawn to a fastener. However, the fasteners were specifically designed for use with these jackets, as the claims reveal.

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In addition to the foregoing, the Examiner also required the applicant to elect a single specie under 35 U.S.C. 121 for prosecution on the merits. There was no description with regard to the species restriction other than:

"This application contains Claims directed to the following patentably distinct species of the claimed invention: figures 1, 19, 22, 29, 35, and 39."

In electing the species of Figure 19, the applicant assumed that the Examiner restricted the application between the various jacket sections as shown, for example, in Figures 1-12 and the other jacket sections shown in Figures 13-18. Since the two jackets are always used together and never separately, the applicant elected the combination of the two as shown in Figure 19. Two jacket sections are used since this is the most efficient and only way to mount on the pipes and conform to the configuration of the pipes.

The applicant never fully understood until the last Office Action dated October 21, 2003 that the basis for the species was different than that which the applicant had assumed. The Examiner further notes that there is another application of the same applicant currently directed toward J-trap covers and is therefore considered mutually exclusive since the applicant filed two applications. First of all, this type of reasoning is not understood. Whether the applicant has filed one application or one hundred applications, that does not support the position of the Examiner that one is mutually exclusive of the other. Secondly, and

more importantly, this other application identified by the Examiner literally covers different types of undersink protective cover systems. Therefore, for the Examiner to contend that one is mutually exclusive of the other is factually inaccurate at best.

With regard to the combination, the Examiner takes the position that one can be used without the other. That would almost be patently ridiculous since these cover systems are all designed to comply with the Americans with Disabilities Act (ADA). If only one of the cover jackets were used, they would not adequately cover the pipe and, hence, the undersink J-trap and therefore would be non-ADA compliant. Consequently, no one intends to make a jacket which is not ADA compliant. Rather, the applicant, as well as all other producers of undersink protective pipe covers will use a jacket system which completely covers the pipe. In other words it would be patently ridiculous to produce a pipe cover system in which only half of the pipe was covered and thereby use a non-ADA compliant pipe cover system. Not only would this open up the applicant, as well as the users, to potential liability, it would preclude use in a variety of areas and, moreover, installers simply would not use such a system. Therefore, it is absolutely necessary to use both covers.

Admittedly, the applicant has shown both cover pieces in the application since each is believed to have certain unique facets. However, there is no situation in which the applicant would ever use one cover piece without the other. There are situations in which

the applicant has shipped one of the cover pieces. However, this is usually as a replacement item as, for example, to replace a damaged cover piece. However, when the cover pieces are sold they are only sold as a combination.

Notwithstanding any of the foregoing, the Examiner took the position that Claims 1-8 require a locking element not shown in Figure 19. Obviously they are not shown in Figure 19. Figure 19 is only a view showing how the two pieces are connected together. In that sense, this same arrangement is clearly shown in the cited publication of the same applicant, it is also shown by several prior art references of record. Please see, for example, the Trueb et al. U.S. Patent No. 5,303,730 which clearly shows these two pieces. In essence, all cover systems are largely based upon this type of construction. Nevertheless, the locking elements of Figure 8 are used with the cover system of Figure 19.

The Examiner contends that Claims 9-12 require a special structure of a fastener lock not shown in Figure 19. Again, Figure 19 was not designed to show the details. The same holds true with regard to Claims 13-16 and 17-21. Consequently, it is believed that all of Claims 1-17 and 31-33 should be properly examinable in the instant application.

Inasmuch as Claims 36-38 are drawn to the connector, it is urged that they should be examined in the same application. The reason is that these connectors were specifically designed for use with this type of cover system. The covers are made of an injection

molded plastic and are usually resilient and pliable. The fasteners are adapted for easy and quick fitting with the covers so that they can be easily mounted on an undersink pipe arrangement. It is therefore believed that this additional group of claims should also be examined with the claims in the instant application.

Notwithstanding any of the foregoing, the error of the Examiner's position is clearly shown by the very prior art cited by the Examiner. Please note, for example, the Lechuga printed publication No. US2002/0112761 in which a pair of jacket sections are shown. Moreover, and in each example, they are always shown as being used together. Please also note every one of the Trueb et al. Patents and every one of the Helmsderfer Patents. Please see that in each of these references which disclose somewhat similar undersink protective cover systems, there is not one example where the pipe covers are used separately.

Indeed, these pipe covers are designed to maintain compliance with the ADA. If any portion of the pipe remains exposed, the compliance is not met. Consequently, the pipe covers would be virtually useless. Therefore, for the Examiner's position to have any merit, then the covers of the application would be virtually useless. It is therefore urged that the Examiner has completely erred in contending that pipe cover sections can be used individually and reconsideration thereof is respectfully solicited.

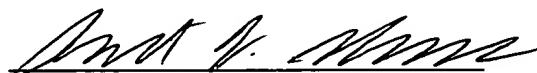
The applicant has amended all of the claims in the application in an effort to move the prosecution of this application and avoid

further unnecessary delay. Therefore, it is urged that an examination on the merits of all claims not examined in the species rejection should now be examined in the application.

In view of the foregoing, favorable reconsideration and allowance is respectfully solicited.

Dated: April 21, 2004

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, D.C. 20231 on 4/21, 2004.

*[Handwritten Signature]*  
(Signature)

Date of Signature: 4/21, 2004

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